

MESSAGE FROM THE GOVERNOR.

Mr. R. B. Walthall, Secretary to the Governor, appeared at the bar of the House, and being duly announced, presented the following messages from the Governor, which were read to the House, as follows:

Governor's Office,
Austin, Texas, March 1, 1923.

To the Members of the House of Representatives, Thirty-eighth Legislature.

Gentlemen: I am hereby returning to you, with my disapproval and veto, House bill No. 102. In returning this bill to you with my disapproval, I desire to make the following observations concerning it:

1. The caption of this act is manifestly too restrictive. Among its provisions is found the following:

"To prepare two bills, one providing a civil and one a criminal code of practice in the courts of this State, and report same to the Governor," etc.

The bill itself clearly contemplates that all the civil and criminal statutes to be adopted in the revision shall be embraced in the two bills referred to, but this caption limits the purpose of the bills so that under the Constitution the bills could embrace only those statutes relating to practice; or, to use the language of the caption, which may constitute the "code of practice in the courts of this State."

A caption similar to this one was used in the act of 1909, which went unchallenged. But if challenged in the courts, this caption would clearly limit the authority of the commissioners in the preparation of the bills proposed to

such laws as would be embraced in the codes of practice instead of permitting them to contain the entire revised civil and criminal statutes. Since it is the purpose of the Legislature and of the Executive to have a full revision of the laws, such as is declared by Section 43, Article 3, of the Constitution, the bill providing therefor should be technically correct in order that the commissioners finally appointed may proceed unhampered by doubt as to their authority or litigation concerning it.

2. Section 2 of the bill specifically requires the commissioners to include in the revision the Acts of the Thirty-second Legislature, etc. What was no doubt intended was that the commissioners should include not only laws passed subsequently to the revision of 1911 and prior to the meeting of this session of the Legislature, but that they should include the laws passed by the Thirty-eighth Legislature and those which might be subsequently passed before the codification was completed. As the section now reads its purpose is not clear, or is at least confusing—and in a re-draft of the measure subsequent to this time, the error pointed out should be corrected.

3. Section 1 of the bill prohibits the commissioners from changing the words or punctuation of laws incorporated in the statutes, except in cases of evident clerical or typographical errors, or to improve the verbiage or make clear the meaning of the text. Section 2 of the bill in its closing portion seems to contemplate that the commissioners shall have authority to revise and render the statutes concise, plain and intelligible, without making radical changes therein. These provisions contained in these two different sections are confusing, if not inconsistent, in their terms, and considered as a whole are apparently too restrictive for the proper revision and digest of the laws of the State, such as is contemplated by the Constitution.

The commissioners should be plainly told the limits of their authority so that these limits will not be in doubt. The caption of the Revised Statutes of 1879 contained language expressive of the purpose of the revision and the extent of the authority exercised by the commissioners, as follows:

"That the omissions and defects therein (referring to the statutes) should be supplied and remedied, and that the whole, so far as practicable, be made concise, plain and intelligible."

The commissioners should not, of course, have authority to write entirely new laws; but, clearly they should have the power to omit from any statute useless, contradictory and confusing language, and to express the plain purpose of the law, where necessary, in simple language. In many instances it will no doubt be found that the meaning of intricate and poorly worded statutes has been declared by the courts. In such a case the commissioners ought to have the power of rewriting the statute, so as to make it express the meaning which the courts have given to it. I do not refer to the construction or application of the statutes but to statutes where there is doubt as to their actual meaning, which has been cleared away by the decisions of the courts. The commissioners should have authority to reconcile conflicts and clarify the text of the statutes to be adopted in such manner as may seem best. The Constitution contemplates that the commissioners will be clothed with broad authority to revise and digest the laws, and the power conferred upon them should be consistent with the constitutional purpose. I have no doubt the commissioners can present to the Legislature for adoption statutes meaning the same as they now mean, but materially reduced in volume, and much plainer than many of them now are. The Revised Statutes of 1879 was a monumental work which has merited and received the commendation of the people of the State since that date. The merits of that work no doubt were due in a very large measure to the distinguished men who constituted the commissioners of the revision. These men were: J. W. Ferris, B. H. Bassitt, S. A. Wilson, George Clark and C. S. West—all distinguished in the history of the State. But when these commissioners acted they acted with the broadest authority, which enabled them to present to the Legislature the work of revision in such a satisfactory form. The power under which they acted is contained in Section 1 of the Act of July 20, 1876, reading as follows:

"Be it enacted by the Legislature of the State of Texas, That the Governor shall by and with the advice and consent of the Senate, if in session, appoint a commission of five persons learned in the law, to make a complete revision and digest of the laws of the State of Texas, and embody the same in a bill which shall be by the commission re-

ported to the Governor and by him laid before the next session of the Legislature, and said commission shall revise all the general statutes of the State in force up to the time they shall make their report, and report to the Legislature which of said statutes in their opinion ought and which ought not to remain in force, and shall suggest such omissions and contradictions as they shall find in said statutes and the mode in which they can be reconciled, supplied or amended; and they shall arrange under appropriate chapters and sections all the different acts and parts of acts relating to the same subject matter which they shall deem ought to be continued or adopted, with such marginal and foot notes and explanations as they may deem essential to a clear understanding of the same; and shall execute and complete the revision in all respects in such a manner as in their opinion will render the general statutes most concise, plain and intelligible; and shall embody the result of their labors in two bills, one containing the entire body of civil statutes, and the other the entire body of the statutes relating to criminal law, both properly indexed." Volume 8, Gammel's Laws, page 894.

A proper law regulating the revision should, of course, require the commissioners to set forth in an appropriate way the changes which they have made in the various articles of the statutes from these articles as originally enacted in order that the members of the Legislature may determine whether they shall approve or disapprove the changes suggested by the commissioners.

4. This bill provides for the annotation of the Statutes. I understand from this that it is contemplated that the decisions of the courts of the State shall be digested and placed as annotations under appropriate articles of the statute. This provision for annotation proved abortive in the revision of 1911, and in my opinion is impracticable and too expensive to be undertaken by the State, and is really unnecessary for the general purposes of Revised Statutes.

The Revised Civil Statutes as now annotated and published by one of the law book publishing houses comprises some eight large volumes, and this indicates an undertaking beyond what is desirable or practicable in a revision of the statutes of the State.

5. A fundamental objection to this bill is that it clearly does not contem-

plate that the commissioners to be appointed under it shall actually do the work of revision, but its purpose is to authorize them to employ some person or corporation to revise the statutes. The bill expressly provides that the commissioners shall not receive any compensation; and it is not believed that men capable of doing this work can be found who can or will give their time and do the work for nothing. The revision of the statutes is a matter of paramount importance and ought to be done personally by the commissioners. They should, of course, have an organization capable of assisting them in the performance of their duties. They ought to be assigned rooms in the Capitol, be authorized to employ clerks and stenographers and, if they think it necessary, experts in the construction and editing and publication of statutes and laws. In other words, they should be empowered to equip themselves with stationery, typewriters, stenographers and such expert help as they find to be necessary to discharge their duties in the most efficient way. The commissioners should be paid a salary sufficient to enable the Governor to obtain the best talent available in this State; and since the positions last but a short time but necessitate the absence of the commissioners from their private practice and private business affairs, a salary commensurate with the work to be done should be paid.

Since our courts hold that the statutes when revised and adopted by the Legislature constitute the law, and that those things omitted are repealed, and that all things included in the revision, whether previously the law or not, by the act of adoption become the law, it is quite plain that the preparation of the Revised Statutes should be done in the most painstaking, careful and thorough manner, and that only the best talent which the State affords should be employed in the preparation of the revisions for adoption by the Legislature.

I am heartily in favor of the purposes of this bill. The work contemplated to be done by this measure is much needed. This will not, however, in my opinion, accomplish the purposes sought, and for this reason is returned to you, hoping that a better bill can now or at some other time be enacted into a law.

Respectfully,
PAT M. NEFF,
Governor.